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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/804,621  | 03/12/2001  | Serge Willenegger    | QCPA363DIVC1        | 3167             |
| 23696   | 7590        | 09/10/2004           | EXAMINER            |                  |
| Qualcomm Incorporated<br>Patents Department<br>5775 Morehouse Drive<br>San Diego, CA 92121-1714 |             |                      |                     | WILSON, ROBERT W |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 2661                |                  |

DATE MAILED: 09/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |
|------------------------------|------------------------|---------------------|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |
|                              | 09/804,621             | WILLENEGGER ET AL.  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |
|                              | Robert W Wilson        | 2661                |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 12 March 2001.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 7-20 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 7 and 20 is/are rejected.
- 7) Claim(s) 8-13 and 15-20 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 13 March 2001 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____ .  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/12/01</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

## DETAILED ACTION

1.0 The application of Willenegger et. al. entitled SUBCHANNEL CONTROL LOOP which was filed on 3/12/01 which claims priority based upon being a CON of 09/353,895 dated 7/15/99 which is a DIV of 08/800,734 which has matured into patent 5,991,284 with filing date of 2/13/97. Claims 7-20 are pending.

### *Double Patenting*

2.0 **Claims 7 & 14** are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,240,071. Although the conflicting claims are not identical, they are not patentably distinct from each other because

Referring to **Claim 7**, Claim 1 of U.S. Patent No.: 6,240,071 teaches all of the limitations of Claim 7 but does not expressly call for: adjusting the transmit power of at least one of said plurality of subchannel signals in accordance with a type of data communication via the corresponding one of said subchannel signals but instead teaches adjusting the power in a subchannel based upon the quality measurement of the signal in the subchannel.

It would have been obvious to one of ordinary skill in the art at the time of the invention that adjusting the power in a subchannel based upon the quality measurement of the signal in the subchannel performs the same function as adjusting the transmit power of at least one of said plurality of subchannel signals in accordance with the type of data communication via the corresponding one said subchannel signal.

Referring to **Claim 14**, Claim 1 of U.S. Patent No.: 6,240,071 teaches all of the limitations of Claim 14 but does not expressly call for: adjusting the transmit power of at least one of said plurality of subchannel signals in accordance with a type of data communication via the corresponding one of said subchannel signals but instead teaches adjusting the power in a subchannel based upon the quality measurement of the signal in the subchannel.

It would have been obvious to one of ordinary skill in the art at the time of the invention that adjusting the power in a subchannel based upon the quality measurement of the signal in the subchannel performs the same function as adjusting the transmit power of at least one of said

plurality of subchannel signals in accordance with the type of data communication via the corresponding one said subchannel signal.

***Claim Objections***

**3.0** Claims 8-13 & 15-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

**4.0** It should be noted that the closest prior art is U.S. Patent No.: 6,240,071 to the limitations to the claimed invention; however, the application was filed after 11/29/99 and was copending with this the application for U.S. Patent No.: 6,240,071 and in addition was owned by the same assignee on the date that this application was filed consequently a 103 (a) rejection is inappropriate.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert W Wilson whose telephone number is (703) 305-4102. The examiner can normally be reached on M-F (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas Olms can be reached on (703) 305-4703. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9314 for regular communications and (703) 872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700.

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Art Unit: 2661

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*Robert W. Wilson*

Robert W Wilson  
Examiner  
Art Unit 2661

RWW

September 7, 2004

*JM*

DANTON  
PRIMARY EXAMINER